IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 15413 of 2005(I)

AGAINST THE ORDER DATED 17/03/2005 IN EP 178/2000 IN OS.60/2000 of SUB COURT, MUVATTUPUZHA

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PETITIONER:

M/S.KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD., REPRESENTED BY ITS GENERAL MANAGER, MAMALA UNIT, ERNAKULAM.

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENTS:

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1. SUKUMARAN, S/O.KRISHNAN, MADATHIKUDIYIL HOUSE, NEENDAPARA KARA, NERIYAMANGALAM VILLAGE.

2. V.R.PREDEEP, S/O.RAVEENDRAN NAIR, VADAYADIYIL HOUSE, THATTEKKANNI P.O., KARIMANAL, IDUKKI.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE DECREE DTD. 19.3.2001 IN O.S.NO.55/00 OF THE HON'BLE MUNSIFF'S COURT, KOLENCHERY.

EXT.P2: COPY OF E.A.NO.49/03 IN E.P.NO.178/2000 IN O.S.NO.60/2000 FILED BEFORE THE HON'BLE SUB COURT, MUVATTUPUZHA.

EXT.P3: COPY OF THE OBJECTION DTD. 10.6.2003 TO E.A.NO.49/03 IN E.P.NO.178/00 IN O.S.NO.60/00 FILED BY 1ST RESPONDENT.

EXT.P4: COPY OF THE ORDER DTD. 17.3.2005 IN E.A.NO.49/03 IN E.P.NO.178/00 IN O.S.NO.60/00 OF THE HON'BLE SUB JUDGE.

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RESPONDENT'S EXHIBITS: NIL

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// TRUE COPY//

PIUS C. KURIAKOSE,J.

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W.P.(C) No.15413 of 2005

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Dated: 24th July, 2007

JUDGMENT

Impugned in this Writ Petition under Article 227 of the Constitution is Ext.P4 order passed by the learned Subordinate Judge dismissing an application for review submitted by the petitioner-Company-garnishee seeking review of an earlier order dated 13.3.2001 directing the petitioner to deposit the amounts mentioned in the attachment order. Obviously the order which was sought to be reviewed is an order passed by the execution court under Order XXI Rule 46A. The learned Subordinate Judge dismissed the application on the reason that the dispute which the petitioner has now raised regarding its liability to the judgment-debtor in the case was not raised earlier but was raised only after Ext.P1 decree was obtained by the petitioner against the judgment-debtor on 19.3.2001. Though it is true that Ext.P1 decree was passed in favour of the petitioner only on 19.3.2000 it is discernible that the suit in which Ext.P1 decree was passed, was filed by the petitioner on 29.8.2000 which is long prior to the date mentioned in Ext.P4 order. It is not possible to say at this stage that the dispute raised by the petitioner-garnishee over its liability to the judgment-debtor is totally unsustainable. In other

words, in my opinion there is scope for adjudication as envisaged by Rule 46C or Order XXI regarding the quantum of the garnishee's liability to the judgment-debtor. Rule 46 of Order XXI mandates in situations were the garnishee disputes his liability that the court tries the issue of the garnishee's liability to the debtor including the issue of extent of the liability as if it were an issue in the suit. The proviso to Rule 46 which deals with situations where it is only the extent of the liability which is disputed by the garnishee can also have some application in this case. Of course as noticed by the learned Subordinate Judge, there was laxity on the part of the garnishee in making prompt appearances in response to notices from the court. The submission of the learned counsel for the petitioner is that the ex parte order passed against the garnishee in the execution side stands already set aside. If that is the position, there was justification for allowing the application for review filed by the petitioner on terms:

In the result, I set aside Ext.P4 order and allow Ext.P2 Review Petition filed by the petitioner on condition that the petitioner pays a sum of Rs.1000/- by way of cost to the respondents either directly or through their counsel in this court and pays a further sum of Rs.500/- by way of additional cost to the Kerala High Court Legal Services

Committee within one month from today. Once evidence regarding payment of cost is produced before the court below, that court will post the case for enquiry into the question of the garnishee's liability and its extent. The respondents will also be permitted to participate in the enquiry and to adduce counter evidence. Once the enquiry is over, the court below will give its verdict on the issue as envisaged by Rule 46C of Order XXI C.P.C. It is needless to mention that this judgment will not become operative unless the cost is paid within the stipulated time.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**